No. 14984

United States
Court of Appeals
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

WILLIAM G. OSTLER, Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court
of the United States

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —2-8-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

The Tax Court of the United States

Docket No. 52185

WILLIAM G. OSTLER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Appearances:

For Respondent: Richard W. Janes, Esq.

DOCKET ENTRIES

1954

Mar. 15—Petition received and filed. Taxpayer notified. Fee paid.

Mar. 16—Copy of petition served on General Counsel.

May 5—Answer filed by General Counsel.

May 5—Request for hearing in Los Angeles, California filed by General Counsel.

May 6—Notice issued placing proceeding on Los Angeles, California calendar. Service of answer and request made.

1955

Mar. 25—Hearing set July 5, 1955, Los Angeles, California.

Apr. 18—Notice hearing date changed to 6/20/55, Los Angeles, California.

1955

Jun. 23—Hearing had before Judge Black, on merits. Stipulation of facts filed. No briefs.

Jul. 13—Transcript of hearing 6/23/55 filed.

Jul. 25—Memorandum findings of fact and opinion filed, Judge, Black. Decision will be entered for the petitioner. Copy served.

July 26—Decision entered, Judge, Black.

Oct. 17—Petition for review by United States Court of Appeals, Ninth Circuit, filed by respondent.

Oct. 27—Proof of service on petitioner filed.

Nov. 16—Motion for extension to December 27, 1955 for filing the record and docketing the appeal filed by respondent.

Nov. 18—Order extending time to December 27, 1955 for filing the record and docketing the appeal, entered.

Nov. 29—Statement of points with statement of service by mail to William G. Ostler, filed by respondent.

Nov. 29—Designation of contents of record with statement of service by mail to William G. Ostler filed by respondent.

Dec. 2—Supplemental designation of contents of record with statement of service by mail thereon filed by respondent.

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency ARC-Ap:SF and LA:90D:CTF dated December 14, 1953 and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with residence at 2626½ East Glenn Avenue, Tucson, Arizona. The return for the period here involved was filed with the collector for the district of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on December 14, 1953.

3. The taxes in controversy are income taxes for the year 1950, and in the amount of One Thousand Two Hundred Ninety Two Dollars and Thirty-five Cents.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors: (a) Petitioner has been denied the right to file a joint return with Frances S. Ostler, who was petitioner's wife until March 1951.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows: (a) Frances S. Ostler secured an interlocutory decree of diverce from petitioner February 27, 1950. (b) Petitioner filed a joint return for the entire year of

1950 which took advantage of a loss of $3100.00 from a sale of rental property. (c) Frances S. Ostler secured a decree of divorce from petitioner in March 1951. (d) Petitioner denied right to file joint return by Bureau of Internal Revenue. (e) On March 11, 1953 the Tax Court ruled in the case of Marriner S. Eccles vs. Commissioner, Docket 32, 823, in an opinion by Judge Hall that a decree of divorce interlocutory in nature did not deprive the petitioner of the right to file a joint return and (f) petitioner receives a notice of deficiency alleging taxes due in the amount of $1292.35.

Wherefore, the petitioner prays that this Court may hear the proceedings and grant petitioner the right to file his said joint return for the year 1950, which right is denied at present by the Commissioner of Internal Revenue.

/s/ WILLIAM G. OSTLER

Duly Verified.

EXHIBIT A

U. S. Treasury Department, Office of the Regional Commissioner, Internal Revenue Service, 1250 Subway Terminal Building, 417 South Hill Street, Los Angeles 13, California.

In replying refer to: ARC-AP:SF LA:90D:CTF

Mr. William G. Ostler Dec. 14, 1953
2626½ East Glenn Avenue, Tucson, Arizona

Dear Mr. Ostler:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1950 discloses a deficiency of $1,292.35, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90 day period.

Should you not desire to file a petition, you are

requested to execute, in duplicate, the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1250 Subway Terminal Building, 417 South Hill Street, Los Angeles 13, California. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner of Internal Revenue

Enclosures: Statement, Form 1276, Agreement Form.

[Endorsed]: T.C.U.S. Filed March 15, 1954.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney Daniel A. Taylor, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4. (a). Denies the allegations of error contained in section (a) of paragraph 4 of the petition.

5. (a) and (b). Admits the allegations contained in sections (a) and (b) of paragraph 5 of the petition.

(c) Denies for lack of knowledge as to the truth or correctness thereof the allegations contained in section (c) of paragraph 5 of the petition.

(d), (e) and (f). Admits the allegations contained in sections (d), (e) and (f) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ DANIEL A. TAYLOR, REM
Chief Counsel, Internal Revenue Service

Of Counsel:

T. M. Mather, Acting Regional Counsel,

E. C. Crouter, Assistant Regional Counsel,

R. E. Maiden, Jr., Special Assistant to the Regional Counsel,

Charles H. Chase, Special Attorney, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed May 5, 1954.

[Title of Tax Court and Cause.]

MEMORANDUM OF FINDINGS OF FACT AND OPINION

Filed July 25, 1955.

On March 15, 1951, a joint individual income tax return was filed with the Collector of Internal Revenue of Los Angeles, California, by petitioner and his then wife. On or about February 27, 1950, petitioner's wife secured an interlocutory decree of divorce from petitioner. This interlocutory decree of divorce did not become final until on or about March 13, 1951. The Commissioner in his determination of the deficiency has held that petitioner and his wife did not have the right to file a joint return for the calendar year 1950 and has made certain adjustments to petitioner's net income for 1950 in accordance with this determination. Held, the petitioner and his wife, Frances S. Ostler, were husband and wife on December 31, 1950, and were entitled to file a joint return. Marriner S. Eccles, 19 T.C. 1049, followed.

Richard W. Janes, Esq., for the respondent.

The Commissioner has determined a deficiency in petitioner's income tax for the calendar year 1950 of $1,292.35. To this determination of the Commissioner petitioner assigns error as follows:

The determination of tax set forth in the said notice of deficiency is based upon the following errors: (a) Petitioner has been denied the right to

file a joint return with Frances S. Ostler, who was petitioner's wife until March 1951.

Findings of Fact

The facts have been stipulated and are adopted as our Findings of Fact. Such portions of the facts which have been stipulated as are deemed necessary to an understanding of the issue which is to be decided are summarized as follows:

The petitioner, William G. Ostler, is an individual with residence at Tucson, Arizona.

On March 15, 1951, a joint individual income tax return, Form 1040, was filed with the Collector of Internal Revenue at Los Angeles, California. This joint return was filed by petitioner and his then wife, Frances S. Ostler, sometimes hereinafter referred to as Frances.

On or about February 27, 1950, Frances secured an interlocutory decree of divorce from petitioner. The joint return filed by petitioner and Frances claimed a total of three exemptions, one each for the principal taxpayers and one for a daughter, Mary Jane Ostler. The items respecting income, deductions, and losses stated and claimed upon this joint return were computed and reported upon the community property basis. Both petitioner and Frances each had individual sources of income from their labor and ownership of productive property and property rights.

Prior to the calendar year 1950, during that year, and for a period of time thereafter, both petitioner

and Frances were domiciled in and residents of the State of California.

The interlocutory decree of divorce obtained February 27, 1950, became final on or about March 13, 1951.

On December 14, 1953, a statutory notice of deficiency in the amount of $1,292.35 for the calendar year 1950 was mailed to petitioner. The basis for the adjustments making up the deficiency was that, under the provisions of section 51(b) of the Internal Revenue Code of 1939, petitioner and Frances could not file a joint return for the taxable year ended December 31, 1950, since the interlocutory decree of divorce was granted February 27, 1950. The deficiency of $1,292.35 resulted from a reallocation of community income to separate incomes of petitioner and Frances.

Opinion

Black, Judge: We have only one issue in this proceeding and that is whether or not petitioner had a right to file a joint return for the taxable year 1950 with Frances, who had secured an interlocutory decree of divorce from petitioner on or about February 27, 1950. It is stipulated that this interlocutory decree of divorce did not become final until on or about March 13, 1951.

At the hearing in this proceeding held in Los Angeles, California, June 23, 1955, petitioner did not appear, he being ill at the time of the hearing. Respondent appeared by his counsel and presented

a complete stipulation of facts which had been agreed upon by the parties.

Respondent's counsel stated that the only issue involved in the proceeding is the same as the Tax Court had before it and decided in Marriner S. Eccles, 19 T.C. 1049, affirmed per curiam (C.A. 4) 208 F.2d 796. Respondent has not acquiesced in the Tax Court's decision in the Eccles case and its affirmance by the Fourth Circuit and still contests the point in the instant case. The Division of the Court hearing the proceeding, upon being advised that the only issue involved was the same as that present in the Eccles case, stated that no briefs would be required and that the issue would be decided for petitioner upon authority of the Eccles case.

It will be noted that among other things stated in the stipulation of facts are these:

7. On December 14, 1953, a statutory notice of deficiency in the amount of $1,292.35 for the calendar year 1950 was mailed to petitioner. The basis for the adjustments making up the deficiency was that, under the provisions of Section 51(b) of the Internal Revenue Code of 1939, petitioner and Frances S. Ostler could not file a joint return for the taxable year ended December 31, 1950, since the interlocutory decree of divorce was granted on February 27, 1950. The deficiency of $1,292.35 resulted from a reallocation of community income to separate incomes of petitioner and Frances S. Ostler. * * *

Section 51(b) of the 1939 Code was quoted and discussed by us in Marriner S. Eccles, supra, and the interpretation of this section which respondent seeks to give to it in his deficiency notice was denied by us. We see no reason to change our views.

In the Eccles case, supra, we held that where the taxpayer was divorced under an interlocutory decree on August 2, 1949, which did not provide for separate maintenance of either party, the decree of divorce becoming final six months after that date, that under the laws of the State of Utah, domicile of the parties, the taxpayer and his wife were husband and wife on December 31, 1949, and were entitled to file a joint return. See also Alice Humphreys Evans, 19 T.C. 1102, affirmed 211 F.2d 378. The fact that in the Eccles case the husband and wife were domiciled in the State of Utah, whereas here they are domiciled in the State of California, makes no difference. In a joint return all items of income of either spouse are included and all items of deductions to which either is entitled are taken and the tax liability is computed as one tax liability and both husband and wife are jointly and severally liable for the tax shown on the return.

We decide the only issue involved in this proceeding in favor of the petitioner.

Decision will be entered for the petitioner.

[Endorsed]: T.C.U.S. Received July 13, 1955.

The Tax Court of the United States
Washington

Docket No. 52185

WILLIAM G. OSTLER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion filed July 25, 1955, it is

Ordered and Decided: That there is no deficiency in income tax for the calendar year 1950.

[Seal] /s/ EUGENE BLACK,
Judge

Entered: July 26, 1955.

Served: July 27, 1955.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed between the Commissioner of Internal Revenue and the above-named taxpayer that the following facts are true.

1. The petitioner, William G. Ostler, is an individual with residence at 2626½ East Glenn Avenue, Tucson, Arizona.

2. On March 15, 1951, a joint individual income tax return, Form 1040, was filed with the Collector of Internal Revenue at Los Angeles, California. This joint return was filed by petitioner, William G. Ostler, and his then wife, Frances S. Ostler.

3. On or about February 27, 1950, Frances S. Ostler secured an interlocutory decree of divorce from petitioner.

4. The joint return filed by petitioner and his wife claimed a total of three exemptions, one each for the principal taxpayers and one for a daughter, Mary Jane Ostler. The items respecting income, deductions, and losses stated and claimed upon said joint return were computed and reported upon the community property basis. Both petitioner and his then wife each had individual sources of income from their labor and ownership of productive property and property rights.

5. Prior to the calendar year 1950, during said year, and for a period of time thereafter, both petitioner and his then wife, Frances S. Ostler, were domiciled in and residents of the State of California.

6. The interlocutory decree of divorce obtained February 27, 1950, became final on or about March 13, 1951.

7. On December 14, 1953, a statutory notice of deficiency in the amount of $1,292.35 for the calendar year 1950 was mailed to petitioner. The basis

for the adjustments making up the deficiency was that, under the provisions of Section 51(b) of the Internal Revenue Code of 1939, petitioner and Frances S. Ostler could not file a joint return for the taxable year ended December 31, 1950, since the interlocutory decree of divorce was granted on February 27, 1950. The deficiency of $1,292.35 resulted from a reallocation of community income to separate incomes of petitioner and Frances S. Ostler. The adjustments to net income as per the statutory deficiency notice are, as follows:

"Net income as disclosed by return (joint return filed)		$ 7,227.25
Unallowable deductions:		
(a) Loss from business disallowed		300.72
(b) Loss from sale of property disallowed		3,100.00
Total		$10,627.97
Decrease in income and additional deduction:		
(c) Salaries decreased	$967.50	
(d) Rental income eliminated	213.00	
(e) Standard deduction increased	196.97	1,377.47
Net income adjusted (your separate net income)		$ 9,250.50

Explanation of Adjustments

(a) There is eliminated from your net income the loss claimed from business in the amount of $300.72, since it represents a loss incurred by Frances S. Ostler after the interlocutory decree of divorce.

(b) There is eliminated from your net income the loss of $3,100.00 claimed from sale of rental

property, since the property was the separate property of Frances S. Ostler.

(c) Salaries reported are decreased in the amount of $967.50 representing the community half of salary earned to February 27, 1950, date of interlocutory decree of divorce, which is income of Frances S. Ostler.

(d) Rental income reported in the amount of $213.00 is eliminated since it represents the separate income of Frances S. Ostler.

(e) You are allowed a standard deduction of $1,000.00 in lieu of $803.03 claimed in the return, or an increase of $196.97. Section 23(aa), I.R.C."

7. The petition claims the privilege of petitioner and Frances S. Ostler to file a joint return for the calendar year 1950 and, with respect to the adjustments made in the statutory notice of deficiency, assigns as error the elimination of the loss of $3,100 which had been claimed on the joint return as loss from the sale of rental property. The rental property which was sold at a loss was the separate property of Frances S. Ostler and, but for the availability of the filing of a joint return, the loss from the sale thereof could not be reflected to the tax advantage of petitioner, William G. Ostler.

8. The following is a full and exact copy of a letter dated May 13, 1954, written by petitioner to the Commissioner of Internal Revenue:

"Tucson, Arizona, May 13, 1954

"Commissioner of Internal Revenue

Chief Counsel, Internal Revenue Service

Mr. Daniel A. Taylor

Re: Docket No. 52,185 Ostler vs. Commission

Dear Mr. Taylor:

This is to acknowledge your letter of May 6, 1954. I have been out of town for a few days, hence the delay in my answering.

In relation to the contents of your letter and its notification I wish to state that I will be unable to participate in the trial and in lieu thereof do desire to have the case tried on a stipulation of facts and law.

It is my contention that a ruling, handed down March 11, 1953, by the Tax Court in an opinion by Judge Hall, Docket No. 32,823 in the case of Marriner S. Eccles vs. Commission, does apply to this case. I have been informed that this ruling of March 11, 1953 was appealed by the Commission and that the appeal has since been heard resulting in upholding of the opinion of Judge Hall. On this and other items to be considered I rest my case.

Most respectfully yours

W. G. Ostler, 2626½ East Glenn, Tucson, Arizona. Re: Docket No. 52185"

/s/ W. G. OSTLER,
Petitioner

/s/ JOHN POTTS BARNES REM
Chief Counsel, Internal Revenue Service

[Endorsed]: T.C.U.S. Filed June 23, 1955.

JOINT EXHIBIT A-1

(Copy) Tucson, Arizona, June 11, 1955

Mr. Melvin L. Sears

Dear Sir:

In reply to your letter of June 7th I am enclosing the original and copy of stipulation with my signature signed on the indicated lines as you requested. My position is much the same as stated in my letter to Mr. Daniel A. Taylor dated May 13th 1954. As much as I would like to, I will not, in fact, it is impossible for me to be present at the trial. I have suffered sever reverses and can not even pay an attorney to represent me.

As you will note there have been no changes in the stipulation and only one addition. In item No. 6 I added the words (on or about Mar. 13, 1951) I have no copy or exact information as to the date of the final papers but it was very near the above mentioned date.

Mr. Frank T. Hennessey Attorney of 11130 Mc-

Cormick St North Hollywood California filed the final papers. The Court was in the City of Los Angeles but I do not know the number.

I trust this information will help. In any case it is all I have.

I want to thank you for your consideration and wish you the very best of everything.

Yours very truly

W. G. Ostler

JOINT EXHIBIT B-2

20

FORM 1040 Treasury Department Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

For other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951, attach Form 1040FY

1950 CALENDAR YEAR

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces — Serial No. 3212697 — (Cashier's Stamp)

Name: William G. & Frances S. Ostler (PLEASE PRINT. If this is a joint return of husband and wife use first names of both)

HOME ADDRESS: [redacted], 8347 Lurline Ave (PLEASE PRINT. Street and number or rural route)

Canoga Park, [redacted], California (City, town, or post office) (Postal zone number) (State)

Social Security No. 550-14-6019 Occupation: Studio Dept. Head

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instructions) with 1950 gross income of less than $500 who received more than one-half of their support from you in 1950. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)	Check below whether you (or your wife) were at the end of your taxable year— 65 OR OVER	BLIND	On lines a and b below— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.
Your name: William G. Ostler	Yes ☐ No ☒	Yes ☐ No ☒	a. Number of exemptions for you: 1
Wife's (or husband's) name: Frances S. "	Yes ☐ No ☒	Yes ☐ No ☒	b. Number of her (his) exemptions: 1

Name of Other Dependent Relative	Relationship	Address—If different from yours
Mary Jane Ostler	Daughter	

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 3

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1950. BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of Armed Forces and persons claiming traveling or reimbursed expenses, see instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
Paramount Pictures Corp.	Hollywood, Calif.	$ 1338 30	$ 10750 00
H. G. Steinwinter	La Jolla, "	53 60	468 00
	Enter totals	$ 1391 90	$ 11218 00

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here: 3187 72

4. Add income shown in items 2 and 3, and enter the total here: $ 8030 28

IF YOUR INCOME WAS LESS THAN $5,000. Use the table on page 4 to find your tax—unless you itemize your deductions. This table allows about 10 percent of your total income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF INCOME WAS $5,000 OR MORE.—Do not use tax table. Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

HUSBAND AND WIFE.—For split-income benefits, file a joint return. If filing separate returns, and one itemizes deductions, both must itemize.

5. Enter your tax from table on page 4, or from line 18, page 3: $ 981 74

6. How much have you paid on your 1950 income tax?
   (A) By tax withheld (in item 2, above). Attach Original Forms W-2: $ 1391 90
   (B) By payments on 1950 Declaration of Estimated Tax:
   Enter total here → 1391 90

7. If your tax (item 5) is larger than payments (item 6), enter BALANCE OF TAX DUE here: $
   This balance of tax due must be paid in full with return.

8. If your payments (item 6) are larger than your tax (item 5), enter the OVERPAYMENT here: $ 410 16
   Enter amount of item 8 you want: Refunded to you $ 410.16; Credited on your 1951 estimated tax $
   Do you own any prior year Federal tax for which you have been billed? no (Yes or No)

Did you file a return for a prior year, state latest year: 1949

Where filed: Los Angeles

Which Collector's office did you pay amount claimed in item 6 (B), above?

County in which you reside: Los Angeles

Is your wife (or husband) making a separate return for 1950? no (Yes or No)

If "Yes," write her (or his) name

I declare that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Bookkeepers Business Service Co. Van Nuys Calif. (Name of person, other than taxpayer, preparing this return) (Date) (Name of firm or employer, if any)

William G. Ostler (Signature of taxpayer) 3-1-51 (Date)

Frances S. Ostler (Signature of taxpayer's wife or husband if this is a joint return) 3-1-51 (Date)

To secure any benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has income.

16—65251-4

This schedule becomes a part of the Income Tax return of

WILLIAM G. & FRANCES S. OSTLER

6813 Topanga Canyon

Canoga Park, Calif.

Cafe
Type of Business

PROFIT OR LOSS STATEMENT

TOTAL SALES		$ 6468.66
COST OF MERCHANDISE SOLD		
Opening Inventory	$	
Merchandise Purchased	$ 3874.91	
Total	$	
Ending Inventory	$	
COST OF MERCHANDISE SOLD		$ 3874.91
Gross Profit for 8/22 - 12/31/50		$ 2593.75
COST OF OPERATION		
Wages	$ 1072.59	
Rent, Gas, Electricity and Telephone	$ 855.25	
Gas, Oil and Delivery Expense	$ 25.21	
Insurance and Advertising	$ 106.69	
Taxes	$ 194.50	
Undistributed Expense	$ 70.04	
Maintenance & Repairs	$ 390.19	
Equipment stolen	$ 80.00	
	$	
TOTAL COST OF OPERATION		$ 2794.47
NET Before Depreciation		$ 200.72
Depreciation for Period		$ 100.00
NET Loss for the period of 8/22- 12/31/50		$ 300.72

BOOKKEEPERS
BUSINESS SERVICE COMPANY

Joint Exhibit B-2--(Continued)

RENTAL SCHEDULE TO BE ATTACHED TO THE 1950 RETURN OF

William G. & Frances S. Ostler

KIND OF PROPERTY	Amount Received	Depreciation	Repairs & Expenses	Net Profit
House & Lot	660.00	-0-	447.00	213.00
TOTAL				

EXPENSES ON RENTALS

TYPE OF EXPENSE	1	2	3	4	5	6
Roof Repairs						
Plumbing Repairs						
Electrical Repairs						
Misc. Repairs						
Painting						
Cleaning & Decor.						
Gardner						
Insurance						
Utilities						
Taxes	147.00					
Interest	300.00					
TOTAL EXPENSES	447.00					

CHEDULE TO BE ATTACHED TO THE 1950 U.S. INCOME TAX RETURN OF

William G. & Frances Ostler

1. Kind of property (buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Depreciable cost or other basis to be recovered	7. Estimated life used to compute for depreciation	8. Estimated salvage value from beginning of year	9. Depreciation allowable this year
ipment	8-50	1200.00	-0-	-0-	1200.00	8		100.00

Joint Exhibit B-2--(Continued)

(See instructions)		
	Total Miscellaneous Deductions	
	TOTAL DEDUCTIONS	$

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

Enter amount shown in item 4, page 1. This is your Adjusted Gross Income	$ 8030	28
Enter DEDUCTIONS. If deductions are itemized above, enter the total of such deductions. If adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of 10 percent of line 1, above, or $1,000, whichever is the lesser, or $500 if this is the separate return of a married person	803	03
Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 7227	25
Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here	1800	00
Subtract line 4 from line 3. Enter difference here	$ 5427	25
6, 7, and 8 should be filled in ONLY by a single person or a married person making a separate return		
Use the tax rates shown on page 16 of Instructions to figure your tentative tax on amount shown in line 5 (if line 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$	
If line 6 is (a) not over $400, enter 13% of amount on line 6		
(b) over $400 but not over $100,000, enter $52 plus 9% of the excess over $400		
(c) over $100,000, enter $9,016 plus 7.3% of the excess over $100,000	$	
Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax		
9 to 13 should be filled in ONLY if this is a joint return of husband and wife		
Enter here one-half of amount on line 5, above	$ 2713	62
Use the tax rates shown on page 16 of Instructions to figure your tentative tax on amount shown in line 9 (if line 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here	$ 557	00
If line 10 is (a) not over $400, enter 13% of amount on line 10	66	13
(b) over $400 but not over $100,000, enter $52 plus 9% of the excess over $400		
(c) over $100,000, enter $9,016 plus 7.3% of the excess over $100,000	$ 490	87
Subtract line 11 from line 10. Enter the difference here	$ 981	74
Multiply amount on line 12 by 2. Enter this tax here. This is your combined normal tax and surtax	$	
If alternative tax computation is made on separate Schedule D, enter here tax from line 12 on back of Schedule D		
If you used the standard deduction in line 2, disregard lines 15, 16, and 17, and copy on line 18 the same figure you entered on line 8, 13, or 14, whichever is applicable		
Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116) $		
Enter here any income tax paid at source on tax-free covenant bond interest	$	
Add the figures on lines 15 and 16 and enter the total here	$	
Subtract line 17 from line 8, 13, or 14, whichever is applicable. Enter difference here and in item 5, page 1. This is your tax		

16—00001-1

ORIGINAL REFUND HAS BEEN MADE -

Check No. 16217488 - 6-15-51

$410.16 plus $3.47 interest - total $413.63

per District Director's Office - Los Angeles.

C. Forcum
Appellate Div.
11-16-53

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 52185

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

WILLIAM G. OSTLER,
Respondent on Review.

PETITION FOR REVIEW

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on July 26, 1955 "that there is no deficiency in income tax for the calendar year 1950." This petition for review is filed pursuant to the provisions of Sections 7482 and 7483 of the Internal Revenue Code of 1954.

The respondent on review, William G. Ostler, an individual residing at 2626½ East Glenn Avenue, Tucson, Arizona, filed his Federal income tax return for the calendar year 1950, the taxable year here involved, with the former Collector of Internal Revenue at Los Angeles, California. Venue on appeal, therefore, lies in the United States Court of Appeals for the Ninth Circuit where this review is sought.

Nature of Controversy

The sole issue presented to and passed upon by

The Tax Court of the United States, and which was decided contrary to the Commissioner's determination, is whether the Commissioner erred in holding that the taxpayer respondent, William G. Ostler, had the right to file a joint Federal income tax return for the taxable year 1950 with his former wife, Frances S. Ostler, from whom he was divorced, an interlocutory decree of divorce having been obtained by Frances on or about February 27, 1950, which decree became final on or about March 13, 1951. A so-called joint Federal income tax return for the calendar year 1950 was filed by the respondent and his former wife on March 15, 1951. A deficiency in tax was determined by the Commissioner against the respondent on review, William G. Ostler, in the amount of $1,292.35, predicated on the disallowance of the right to file a joint return under Section 51(b) of the Internal Revenue Code of 1939 and the resultant reallocation of community income to separate incomes of the respondent and his former wife. The Tax Court of the United States disagreed with the Commissioner's determination and entered its decision of no deficiency as hereinabove indicated.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service
Attorneys for Petitioner on Review

[Endorsed]: T.C.U.S. Filed October 17, 1955.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

Comes Now the petitioner on review herein, by his attorneys, H. Brian Holland, Assistant Attorney General, and John Potts Barnes, Chief Counsel, Internal Revenue Service, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision "that there is no deficiency in income tax for the calendar year 1950."

2. In failing and refusing to sustain the deficiency in income tax determined by the Commissioner.

3. In holding and deciding that the taxpayer and his former wife, Frances S. Ostler, were husband and wife on December 31, 1950 and were entitled to file a joint Federal income tax return for the taxable year 1950.

4. In failing and refusing to hold and decide that the taxpayer and his former wife, Frances S. Ostler, who were legally separated (although not absolutely divorced) under an interlocutory decree of divorce on or about February 27, 1950, which decree became final on or about March 13, 1951, could not, within the meaning of Section 25(b)(2)(B) of the Internal Revenue Code of 1939, file a joint Federal income tax return for the taxable year 1950.

5. In holding and deciding that the taxpayer and

his former wife, Frances S. Ostler, were entitled to file a joint Federal income tax return for the taxable year 1950.

6. In that its opinion and decision are not supported by but are contrary to the facts as stipulated by the parties.

7. In that its opinion and decision are contrary to law and the Commissioner's regulations.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General

/s/ JOHN POTTS BARNES,
Chief Counsel, Internal Revenue Service

Attorneys for Petitioner on Review

Statement of Service attached.

[Endorsed]: T.C.U.S. Filed November 29, 1955.

The Tax Court of the United States

[Title of Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of The Tax Court of The United States, do hereby certify that the foregoing documents 1 to 13, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation of Contents of Record on Review" and "Supplemental Designation of Contents of Record on Re-

view" in the proceeding before The Tax Court of The United States entitled: "William G. Ostler, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 52185" and in which the respondent in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of The United States, at Washington, in the District of Columbia, this 14th day of December, 1955.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, The Tax Court of the
United States

[Endorsed]: No. 14984. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. William G. Ostler, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: December 27, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.